



November 26, 2002

Ms. Beverly West Irizarry  
Gale, Wilson & Sanchez  
115 East Travis, Suite 618  
San Antonio, Texas 78205

OR2002-6773

Dear Ms. Irizarry:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 172720.

The South San Antonio Independent School District (the "district"), which you represent, received a written request for the following categories of information regarding the selection of candidates for the position of Director of Special Education:

1. The information of each candidate given to the members of the interviewing committee;
2. The universal questions asked of each candidate and any specific question directed to an individual candidate;
3. The scoring sheet for each candidate interviewed; and
4. The final tally from the Board Minutes from both of the meetings where the names of candidates were presented to the School Board.

You state that the district does not maintain any records responsive to request item 4.<sup>1</sup> You contend, however, that the remaining information coming within the scope of the request is excepted from required disclosure pursuant to sections 551.104<sup>2</sup>, 552.101, 552.102, 552.107, 552.111, and 552.117 of the Government Code.<sup>3</sup>

Because your section 552.102 claim is the most inclusive, we will address it first. Section 552.102(a) of the Government Code excepts from public disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy . . . ." Section 552.102 is designed to protect public employees' personal privacy. The scope of section 552.102 protection, however, is very narrow. See Open Records Decision No. 336 (1982); see also Attorney General Opinion JM-36 (1983). The test for section 552.102 protection is the same as that for information protected by common-law privacy under section 552.101: the information must contain highly intimate or embarrassing facts about a person's *private* affairs such that its release would be highly objectionable to a reasonable person *and* the information must be of no legitimate concern to the public. *Hubert v. Harte-Hanks Tex. Newspapers, Inc.*, 652 S.W.2d 546, 550 (Tex. App.--Austin 1983, writ ref'd n.r.e.).

In Open Records Decision No. 455 (1987), this office concluded that each of the following categories of information have a direct bearing on an applicant's suitability for public employment and thus are *not* protected by either common-law or constitutional privacy: applicants' educational training; names and addresses of former employers; dates of employment; kind of work performed, salary, and reasons for leaving; names, occupations, addresses, and telephone numbers of character references; job performances or abilities; birth dates, height and weight, and marital status. We further note that individuals seeking employment generally do not include in their resumes information that is "highly intimate or embarrassing." Accordingly, we conclude that none of the information at issue is protected from public disclosure under section 552.102.

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<sup>1</sup>The Public Information Act does not require a governmental body to obtain information not in its possession or to prepare new information in response to a requestor. See *Economic Opportunities Dev. Corp. of San Antonio v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.-San Antonio 1978, writ dismissed); Open Records Decision No. 445 (1986).

<sup>2</sup>Although you cite section 552.104, we note that the Texas Open Meetings Act is found at chapter 551 of the Government Code. Section 551.104(c) of the Government Code provides that the certified agenda and tape recording of an executive session is available for public inspection only under a court order requiring such a release. However, because you inform us that the district does not possess any "Board Minutes" that are responsive to request item 4, we need not address the applicability of this statute in this instance.

<sup>3</sup>We note that some of the records you submitted to this office are not responsive to the records request. Consequently, we do not address the extent to which those records are subject to public disclosure.

Section 552.107(1) of the Government Code protects information coming within the attorney-client privilege. *See generally* Open Records Decision No. 574 (1990). In instances where an attorney represents a governmental entity, the attorney-client privilege protects only an attorney's legal advice and confidential attorney-client communications. *Id.* You have not explained, nor is it apparent to this office, how any of the responsive records you submitted to this office constitute privileged communications for purposes of section 552.107(1). Accordingly, we conclude that none of the information at issue is protected from public disclosure under section 552.107(1).

Section 552.111 of the Government Code excepts from required public disclosure interagency and intra-agency memoranda and letters, but only to the extent that they contain advice, opinion, or recommendation intended for use in the entity's policymaking process. Open Records Decision No. 615 (1993) at 5. The purpose of this section is "to protect from public disclosure advice and opinions *on policy matters* and to encourage frank and open discussion within the agency in connection with its decision-making processes." *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.) (emphasis added); *see also City of Garland v. Dallas Morning News*, 969 S.W.2d 548 (Tex. App.--Dallas 1998), *aff'd*, 22 S.W.3d 351 (Tex. 2000). In Open Records Decision No. 615 at 5, this office held that

to come within the [section 552.111] exception, information must be related to the *policymaking* functions of the governmental body. An agency's policymaking functions do not encompass routine internal administrative and personnel matters . . . . [Emphasis in original.]

After reviewing the records you submitted to this office, we conclude that none of this information constitutes advice, opinion, or recommendation intended for use in the district's policymaking process. Accordingly, we conclude that none of the information at issue is protected from public disclosure under section 552.111.

You also contend that portions of the submitted records are excepted from public disclosure pursuant to section 552.117 of the Government Code. Section 552.117(1) requires that the district withhold an employee's home address, home telephone number, social security number, and information that reveals whether the employee has family members, but only if the employee elected to keep this information confidential in accordance with section 552.024 of the Government Code. Whether a particular piece of information is protected by section 552.117(1) must be determined at the time the request for the information is made. *See* Open Records Decision No. 530 at 5 (1989). Therefore, in order to withhold section 552.117(1) information from the public, a proper election must be made prior to the receipt of the request for information. We therefore conclude that the district must withhold each district employee's home address, home telephone number, social security number, and information that reveals whether the employee has family members, but only if the employee elected to keep this information confidential in accordance with section 552.024 prior to the

district's receipt of the current records request. All such information pertaining to any other applicant must be released, with the following possible exception.

Social security numbers are excepted from required public disclosure under section 552.101 of the Government Code<sup>4</sup> in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), if the social security number was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. *See* Open Records Decision No. 622 (1994). It is not apparent to us that any social security number contained in the records at issue was obtained or is maintained by the district pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the district to obtain or maintain a social security number. Therefore, we have no basis for concluding that any social security number at issue was obtained or is maintained pursuant to such a statute and is therefore confidential under section 405(c)(2)(C)(viii)(I). We caution, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Prior to releasing any social security number, the district should ensure that the number was not obtained or is maintained by the district pursuant to any provision of law enacted on or after October 1, 1990.

Finally, although the attorney general will not ordinarily raise an exception that might apply but that the governmental body has failed to claim, *see* Open Records Decision No. 325 at 1 (1982), we will raise section 552.137 of the Government Code because the release of confidential information could impair the rights of third parties and because the improper release of confidential information constitutes a misdemeanor. *See* Government Code § 552.352. Section 552.137 of the Government Code makes certain e-mail addresses confidential and provides in relevant part:

- (a) An e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body is confidential and not subject to disclosure under this chapter.
- (b) Confidential information described by this section that relates to a member of the public may be disclosed if the member of the public affirmatively consents to its release.

Gov't Code § 552.137. Several of the documents at issue contains a private e-mail address. Accordingly, section 552.137 requires the district to withhold the e-mail addresses we have marked unless the district receives an affirmative consent to release. However, all of the remaining submitted information must be released to the requestor, except as discussed above.

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<sup>4</sup>Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dr. S.', with a long horizontal flourish extending to the right.

David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/lmt

Ref: ID# 172720

Enc: Submitted documents

c: Ms. Elena Duncan  
9006 Silver Spring  
San Antonio, Texas 78224  
(w/o enclosures)